



कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा,
सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421
**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL
ECONOMIC ZONE, MUNDRA-370421**



A. File No.	:	GEN/ADJ/COMM/323/2021-Adjn-O/o Pr Commr-Cus-Mundra
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-06-23-24
C. Passed by	:	Shri Kesavan Engineer Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue	:	22.06.2023 22.06.2023
E. SCN No. & Date	:	F.No. VIII/48-1555/Petz/Gr-IV/Adj/MCH/2021-22 dated 24.06.2021
F. Importer(s)/Party	:	M/s. Petz Creation, B-73, Wazirpur Industrial Area, Delhi-110052
G. DIN	:	20230671MO000000B37B

1. ग्रहअपीलआदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए-3में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है- Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकार अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लॉर, बहुमालीभवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

- उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within three months from the date of communication of this order.
- उक्तअपीलकेसाथ1000/- रूपयेकाशशुल्कटिकटलगाहोनाचाहिएजहाँशुल्क, व्याज, दंड या शास्ति या दंड पाँच लाख या कम माँगा हो -/5000 रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक कितू पचास लाख रूपये से कम माँगा हो 10,000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बैंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
- उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत -/5 रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं^o 6-के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
- अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए। While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.
- इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष माँग शुल्क का 7.5% भुगतान करना होगा।An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

M/s. Petz Creation, B-73, Wazirpur Industrial Area, Delhi-110052 (hereinafter referred to as "importer") presented Bills of Entry as detailed in Annexure to SCN, through their Customs Broker M/s. SSS Sai Forwarders Pvt. Ltd. at Customs House, Mundra for clearance of imported goods declared as "**Cold Rolled Flat Products of Stainless Steel (Size: Ranging from 600 to 1250MM)**" classifying under CTH 7219 of first schedule of the Customs Tariff Act, 1975.

2. The importer have imported subject consignment of "Cold Rolled Flat Products of Stainless Steel" (Size ranging from 600MM to 1250MM) under CTH 7219 of China origin under Advance Authorization Scheme and availed the duty exemption vide Notification No.18/2015-Cus dated 01.04.2015 in the subject Bills of Entry.

3. Whereas "Cold Rolled Flat Products of Stainless Steel" of size ranging from 600MM to 1250MM, covered under CTH 7219 and originated in or exported from China attracts anti-dumping duty at specified percentage of Landed Value(AV+BCD) as mentioned in the table of the Notification No. 61/2015-Customs (ADD) dated 11.12.2015. Further, the notification No. 18/2015-Cus dated 01.04.2015 grants exemption subject to certain conditions. The condition No. (iv) provides, "that in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with". The quantum of debiting of bond depends on the amount of duty foregone/exemption under Advance Authorization.

4. On scrutiny of the subject Bills of Entry, it is found that the subject goods covered under CTH 7219 (which covers "Cold Rolled Flat Products of Stainless Steel"), are originating and exported from People's Republic China. Therefore, it appears that Anti-dumping Duty (ADD) as per Notification No. 61/2015-Customs (ADD) dated 11.12.2015 is leviable on the same. Relevant part of the notification is reproduced below:

".....Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, read with rules 18 and 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, the specification of which is specified in column (4), falling under tariff heading of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries/territories as specified in the corresponding entry in column (5), exported from the countries/territories as specified in the corresponding entry in column (6), produced by the producers as specified in the corresponding entry in column (7), exported by the exporters as specified in the corresponding entry in column (8), and imported into India, an anti-dumping duty at the rate to be worked out as percentage of the landed value of imports of the subject goods as specified in the corresponding entry in column (9) of the said Table, namely....."

Sl. No.	Tariff heading	Description of goods	Specification	Countries/ Territories of origin	Count ries/ Territories of export	Pro du cer	Exporter	Duty amount
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	7219	Cold Rolled Flat Products of SS	All Grades, All Series except the exclusion as Note below	People's Republic of China	Any	Any	Any	57.39%

(only relevant entry i.e. Sl. No. 1 reproduced above)

4.2 Further, as per Section 3(7) of Customs Tariff Act, 1975, any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent, as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under Customs Act, 1962.

5. As per above said notification, Antidumping duty at the rate equal to the amount calculated at the rate mentioned in corresponding entry in column (9) of the table of the notification mentioned above is levied. Further, IGST on corresponding antidumping duty is also levied. However, from the subject Bills of Entry, it appears that the importer cleared the imported "Cold Rolled Flat Products of Stainless Steel" classifiable under CTH 7219 without payment of Antidumping Duty and IGST leviable thereon. This has resulted in non-levy of Antidumping Duty of **Rs. 93,61,466/-** and short levy of IGST of **Rs. 16,85,064/-**, total amounting to **Rs. 1,10,46,529/-** as detailed Annexure to notice. Therefore, it appears that the said amount of duty of **Rs. 1,10,46,529/-** is liable to be demanded and recovered from the importer under Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AA ibid.

6. Under the provision of Section 17(1) of the Customs Act, 1962, an importer entering any imported goods shall self-assess the duty leviable on such goods. However, in the instant case the importer has self-assessed the subject Bills of Entry without imposing anti-dumping duty and IGST thereon, as discussed above. Thus, it appears that they have contravened the provision of Section 17(1) ibid. For the said act, they have rendered themselves liable to penalty under Section 117 of the Customs Act, 1962.

7. In view of the above, vide Show Cause Notice **F.No. VIII/48-1555/Petz/Gr-IV/Adj/MCH/2021-22 dated 24.06.2021**, M/s. Petz Creation, B-73, Wazirpur Industrial Area, Delhi-110052 are hereby called upon to show cause to the Commissioner of Customs, Customs House, Mundra as to why:

- i. Anti-dumping duty amounting to **Rs. 93,61,466/-** and short levy of IGST of **Rs. 16,85,064/-**, total amounting to **Rs. 1,10,46,529/-** in respect of the subject Bills of Entry, detailed in Annexure to notice, should not be demanded and recovered from them under Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AA ibid.
- ii. Penalty should not be imposed on them under Section 117 of the Customs Act, 1962.

PERSONAL HEARING AND WRITTEN SUBMISSION

8.1 The importer vide letter dated NIL received on e-mail dated 30.05.2023 submitted that export obligation against Bills of Entry involved under the SCN have been completed and redemption letter has been issued by the DGFT.

8.2 They submitted that Notification No. 18/2015-Cus dated 01.04.2015 grants exemption to materials imported into India against a valid Advance Authorization from all of the Customs Duties leviable thereon, including Anti-Dumping Duty. From a perusal of the aforesaid notification, it is evident that when goods are imported under the cover of an Advance Authorization, the importer, along with the whole of the duty of Customs leviable thereon as specified in the First Schedule to the Customs Tariff Act, 1975, is also eligible to avail exemption from the anti-dumping duty leviable on such imports, provided all the conditions stipulated in the said notification are complied with.

8.3 It is submitted that the company has been complying with all the conditions laid down under the aforesaid notification and the same has not been disputed by department. Thus, by virtue of the said notification, the entire anti-dumping duty imposed on the company under the aforesaid notice is liable to be exempted.

8.4 Notification no. 18/2015-Cus dated 01.04.2015 lays down the fact that the proper officer has to debit the bond at the time of clearance of the imported goods. The relevant portion is reproduced hereunder:

“.....subject to the following conditions, namely:-

i. That the said authorization is produced before the proper officer of Customs at the time of clearance for debit;”

8.5 It is submitted that by virtue of the aforesaid notification, the responsibility to debit the bond lies with the proper officer. The anti-dumping duty leviable on the imported goods was liable to be debited by the proper officer.

8.6 It is submitted that Bond is nothing but a commitment to pay the duty/interest/penalty in case of non-discharge of export obligation. In the present case, the goods were imported against the advance authorization which are exempted from duties in terms of Notification No. 18/2015-Cus as amended. Now as the Advance Authorization obligation is completed and EODC issued. Now, there is no need to get bond debited.

8.7 Further, it has been submitted that debiting the duty from the bond in imports under Advance Authorizations by the proper officer is merely a procedural exercise. The failure to debit the same from the bond at the time of clearance is a procedure lapse on the part of the department and should not deprive them from claiming the benefits under Notification No. 18/2015-Cus dated 01.04.2015, especially when all other substantial conditions of the notification have been complied with. It is a well settled principle of law that the substantial benefit of a notification should not be denied on account of procedural lapses and infractions. They have complied with all the conditions stipulated in the aforesaid notification and the same has not been disputed. Therefore, they should not be held liable to pay the differential duty along with interest on the said imports. They have relied the following decisions:

- *N.S. Publicity India Pvt. Ltd. v. CCE [2019 (27) G.S. T.L. 687 (Tri.-Del.)]*
- *Dhampur Sugar Mills Ltd v. CCE [2010 (260) E.L.T. 106 (Tri.-Del.)]*

8.8 It has been further contended by the noticee that the differential duty demanded from them is to be debited from the bond submitted with the department. They are not liable to pay the same in cash as it is exempted in terms of Notification No. 18/2015-Cus dated 01.04.2015. Therefore, based on the well settled position of law, since no physical exchange of currency is ensuing in this transaction, the demand for interest on the differential duty as per the notice, is liable to dropped. Only the duty amount should be debited from the bond and no interest is liable to be recovered from them.

8.9 Contending the proposal of penalty, the noticee have submitted that the proposal is completely incorrect and bad in law. As no duty is payable, no penalty is imposable on them. In this regard, they have relied judgments in **Collector of Central Excise Vs. H.M.M. Limited [1995 (76) ELT 497 (SC)]** and **Commissioner of Central Excise, Aurangabad Vs. Balakrishna Industries [2006 (201) ELT 325 (SC)]**. They have also requested that the submissions made with regard to the duty portion may be considered as part of the submissions relating to the imposition of penalty.

8.10 With the above contentions, they have prayed to drop the proceedings initiated vide the Subject Show Cause Notice, holding that no differential duty in terms of ADD or IGST or interest is payable under Section 28(1) of the Customs Act and for debiting duty from the bond. They have also prayed that no penalty be imposed on them.

8.11 They also submitted the copies of redemption letter/EODC against Advance Authorization no. 0510409800 dated 27.02.2019 issued by DGFT. Further, they requested to that they don't want any further personal hearing in this matter and decide the case the on basis of their reply filed in the matter and EODC submitted.

DISCUSSION AND FINDINGS

9. I have carefully gone through all the records facts of the case and written submission made vide letter dated NIL received on email dated 30.05.2023. The importer vide letter dated NIL received on email dated 30.05.2023 submitted that they don't want any further personal hearing in this matter and decide the case the on basis of their reply filed in the matter and EODC submitted. Thus, I find that principle of natural justice as provided in Section 122A of the Customs Act, 1962 have been complied with and therefore, I proceed to decide the case on the basis of documentary evidences available on records.

10. The issue to be decided in this case is as to whether Anti-dumping duty with IGST thereon is liable to be demanded and recovered under Section 28(1) of the Customs Act, 1962 with applicable interest under Section 28AA ibid and whether the noticee is liable to penalty under Section 117 ibid.

11. I find that it is undisputed fact in this case that the subject goods were imported from China and thus the same attracted Anti-dumping duty under Notification No. 61/2015-Customs(ADD) dated 11.12.2015. However, the subject goods were cleared against Advance Authorizations availing exemption under Notification No. 18/2015-Cus. dated 01.04.2015 which grants exemption from the levy of duties of Customs, including Anti-dumping duty. Therefore, I find that in

normal course, Anti-dumping duty is also exempted in respect of imports under Advance Authorization. However, the said exemption is conditional exemption and various conditions have been stipulated in Notification No. 18/2015-Cus. dated 01.04.2015. In this case, the Anti-dumping duty has been demanded on the ground of violation of a condition of the said Notification which is in respect of execution/ debiting of bond.

11.2 I find that the quantum of debiting of bond depends on the amount of duty foregone/ exempted but in the instant case, as Anti-dumping duty was not fed in system, the amount of duty foregone/ exempted remained less by the amount of Antidumping duty and IGST thereon, leviable on the goods. I find that the said Notification provides for execution of a bond with such surety/ security and in the form and for the amount specified by the Deputy Commissioner/ Assistant Commissioner of Customs. The purpose of executing bond is also apparent from the language of the said condition No. (iv), i.e. to undertake making payment of duty leviable, but for the exemption, on the imported materials in respect of which the conditions specified in the notification are not complied with. It also provides for payment with interest at the rate of fifteen per cent per annum. Execution of bond is covered under condition No. (iv) of the said notification, which reads:

(iv) that in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen per cent per annum from the date of clearance of the said materials;

11.3 The above condition is alleged to be violated by the noticee. I find that as per the above condition, an importer availing exemption has to execute a bond with such surety or security for such sum as specified by the Deputy Commissioner/ Assistant Commissioner of Customs. Vide the bond, the importer has to bind himself to pay duty on demand equal to duty leviable, but for exemption contained therein, on the imported material in respect of which the conditions specified in the notification are not complied with, together with interest at the rate of fifteen per cent per annum from the date of clearance of the said materials.

11.4 In the instant case, bonds were executed by the noticee against the Bills of Entry as detailed in Annexure to notice. I find that bonds were also debited at the time of clearance against the subject Bills of Entry. However, the issue involved in this case relates to quantum of debiting of bonds. In order to secure revenue, bonds are debited by the amounts equal to the amount of duty foregone/ exempted under Advance Authorization. In this case the bonds were debited by amounts, less than the amounts of actual duty foregone/ exempted in the subject Bills of Entry, as the quantum of exemption of Anti-dumping duty and IGST thereon was not covered. I find that as per the Notification No. 18/2015-Cus., the quantum of bond amount has to be specified by the concerned Deputy/ Assistant Commissioner of Customs. It is not a case where the noticee has executed bonds of sums less than the quantum specified by the Deputy/ Assistant Commissioner of Customs. However, the quantum of bond depends on the amount of exemption availed under the said notification. It is admitted fact that while self-assessing

Bills of Entry, details of bond are required to be fed in the Customs Automated System and the system calculates the amount to be debited as per the amount of duty foregone/ exempted under the said Notification of Advance Authorization. The subject Bills of Entry were self-assessed by the noticee as provided under Section 17(1) of the Customs Act, 1962. Though Anti-dumping duty was exempted under Advance Authorization but the noticee was required to correctly self-assess the Bills of Entry by feeding the details of the Notification No. 61/2015-Customs (ADD) dated 11.12.2015 for the purpose of calculation of the quantum of the Anti-dumping duty and IGST thereon. Only on self-assessing correctly, by feeding such details in the Bills of Entry, the quantum of exemption may incorporate the leviable Antidumping duty and IGST thereon. Only then correct amount of duty foregone/ exempted under Advance Authorization may appear in Bills of Entry in the Customs Automated System and accordingly quantum of amount to be debited from the Bonds may be ascertained by the officers. However, in this case, no such details of Anti-dumping duty were incorporated in the subject Bills of Entry by the noticee while self-assessing the subject Bills of Entry and the same has resulted in debiting of less amounts from respective DE Bonds.

12. Further, it has been contended by the noticee that it is a well settled principle of law that substantial benefit of a notification should not be denied on account of procedural lapses and infractions. They have relied judicial decisions in the matters of ***N.S. Publicity India Pvt. Ltd. Vs. CCE [2019 (27) G.S.T.L. 687 (Tri.-Del.)], Dhampur Sugar Mills Ltd. Vs. CCE [2010 (260) E.L.T. 106 (Tri.-Del.)] and Hindustan Coca-Cola Beverages Pvt. Ltd. Vs. CCE [2009 (242) 45 (Tri.-Mum.)]***. I find that though the facts and circumstances of the cited judicial decisions are different, however, I agree that it has been repeatedly held and thus, it is a settled law that substantial benefit of a notification is not liable to be denied on account of procedural lapses and infractions. In the instant case, I find that the Anti-dumping duty and IGST thereon were exempted under Advance Authorization vide Notification No. 18/2015-Cus. The same has been demanded only on the grounds of debiting of bond by less amount. I agree with the contention of the noticee that as per language of the bond, it is nothing but a commitment to pay the duty with interest. In the facts and circumstances of the case, I find that debiting of bond is a procedural issue and following the above discussed settled preposition that substantial benefit of a notification is not liable to be denied on account of procedural lapses and infractions, I hold that the exemption of Anti-dumping duty and IGST thereon cannot be denied on the impugned ground.

12.2 I find that the goods as detailed in Annexure to notice, were imported against the following Advance Authorizations.

Sr.No.	Advance Authorisation No.
1.	0510409800 dated 27.02.2019

12.3 It has also been submitted vide letter dated NIL received on email dated 30.05.2023 by the noticee that they have discharged the Export Obligation and EODC has been issued to them by the DGFT. They have submitted copy of redemption letter dated 07.04.2022 in respect of Advance Authorization no. 0510409800 dated 27.02.2019. The said redemption letter, issued by the Foreign Trade Development Officer, O/o the Addl. DGFT, CLA, New Delhi clearly state that export obligation has been met in full in respect of value as well as quantity, in proportion to imports. These evidences clearly show that the noticee has fulfilled export obligation against the subject imports and the competent authority has

issued EODC/ Redemption Certificate under Para 4.26 of the Handbook of Procedures 2004-09. After issuance of Redemption Letter by the licensing authority, the above finding that debiting of bond is a procedural issue gets further support.

13. In view of the fact that export obligation has been fulfilled by the noticee in respect of goods imported under subject Bills of Entry and the Licensing Authority has issued Redemption Letter, the substantial benefit of exemption notification cannot be denied on account of above discussed procedural lapse. I rely judgment of the Hon'ble High Court of Bombay in **Bhilwara Spinners Vs. Union of India [2011 (267) E.L.T. 49 (Bom.)]** wherein it was held:

"Once the licencing authority has found that the licencing conditions have been fulfilled, it would not be open to the customs authorities to contend that the imports under the licence are contrary to law and take action against the licence holder."

14. In view of the above discussed facts and circumstances of the case, I find that the Anti-dumping duty and IGST thereon, exempted under Advance Authorization (Notification No. 18/2015-Cus.), cannot be demanded and recovered after issuance of EODC/ redemption letter, on the ground of debiting of less amount in the bond. Since duty cannot be demanded, question of demand of interest thereon also does not arise.

15. I proceed to consider the proposal of imposition of penalty under Section 117 of the Customs Act, 1962. It has been contended by the noticee that the proposal of imposition of penalty is incorrect and bad in law. They have contended that since no duty is payable, no penalty is imposable on them. They have relied judgments in **Collector of Central Excise Vs. H.M.M. Limited [1995 (76) E.L.T. 497 (SC)]** and **Commissioner of Central Excise, Aurangabad Vs. Balakrishna Industries [2006 (201) ELT 325 (SC)]**. I find that the judgment in the case of H.M.M. Limited was delivered in respect of Rule 9(2) and Rule 173Q of the erstwhile Central Excise Rules, 1944. The Rule 9(2) provided for time and manner of payment of Central Excise Duty and the Rule 173Q provided for confiscation and penalty in cases of removal of excisable goods in contravention of any of the provisions of the said Rules and in the cases of non-accounting of excisable goods manufactured, produced or stored. Further the judgment in the matter of Balakrishna Industries was delivered in respect of Section 11AC of the Central Excise Act, 1944 which provided for penalty in cases of short payment or nonpayment of Central Excise Duty. However, in the present case there is proposal of penalty under Section 117 of the Customs Act, 1962 which provides for penalty in cases of contravention of any provision of the Customs Act, 1962 where no penalty is provided elsewhere in the Act. Therefore, I find that the cited judgments are in contexts of provisions of other laws and are not applicable in the instant case. However, in the present case there is proposal of penalty under Section 117 of the Customs Act, 1962 which provides for penalty in cases of contravention of any provision of the Customs Act, 1962 where no penalty is provided elsewhere in the Act. I rely the decision of Hon'ble CESTAT in the matter of **Arcadia Shipping & Transport Co. Vs. Commr. of Cus., Jamnagar [2018 (362) E.L.T. 663 (Tri. - Ahmd.)]** wherein it was held that though exemption from Customs duty under Notification No. 153/94-Cus. was available but the penalty was imposable for procedural violations under Customs Act, 1962.

16. In view of the forgoing discussions and findings, I pass the following order:

ORDER

- i. I drop the proposal of demand of Anti-dumping duty amounting to **Rs. 93,61,466/-** and short levy of IGST of **Rs. 16,85,064/-**, total amounting to **Rs. 1,10,46,529/-** in respect of the subject Bills of Entry, detailed in Annexure to notice and interest thereon.
- ii. I impose a penalty of **Rs. 4,00,000/- (Rupees Four Lakh Only)** on M/s. Petz Creation, under Section 117 of the Customs Act, 1962.

17. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved, under the provisions of the Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

18. The SCN F.No. VIII/48-1555/Petz/Gr-IV/Adj/MCH/2021-22 dated 24.06.2021 issued by Commissioner of Customs, Mundra is hereby disposed off.


(Kesavan Engineer)
Commissioner of Customs,
Custom House, Mundra

F. No GEN/ADJ/COMM/323/2021-Adjn
BY REGD. POST AD/SPEED POST

Date: 22.06.2023

To,

1. M/s. Petz Creation,
B-73, Wazirpur Industrial Area,
Delhi-110052 {email: shipment@padia.com, info@petzcreation.com}.

Copy to:-

1. The Chief Commissioner of Customs, CCO, Ahmedabad.
2. The Deputy/Assistant Commissioner (Legal/ prosecution), Custom House Mundra.
3. The Deputy/Assistant Commissioner (Recovery), Custom House, Mundra.
4. The Deputy/Assistant Commissioner (EDI), Custom House, Mundra.
5. The Deputy/Assistant Commissioner (Gr.IV), Custom House, Mundra.
6. Office Copy.